IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

ST.Rev..No. 34 of 2003()
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AITA.201/1993 of AGRL.I.T.ADDL.BENCH,KOZHIKODE
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: REVISION PETITIONER
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M/S.KUSUMAM ESTATE, VADUVANCHAL,
WAYANAD DISTRICT, REPRESENTED BY K.RAVINDRAN,
MANAGING PARTNER.

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:
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STATE OF KERALA.

BY SPL.G.P.(TAXES) SRI V.V.ASHOKAN.

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**H.L. DATTU, C.J. & K.T. SANKARAN, J.**

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**S.T.Rev.No.34 of 2003**

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**Dated, this the 19th day of June, 2007**

**ORDER**

**H.L. DATTU, CJ.**

The matter arises under the provisions of the Kerala Agricultural Income Tax Act (the Act, for short).

2. The assessment year in question is 1990-91. The accounting period is 1989-90. Rejecting the return filed by the assessee, the assessing authority had passed an order under the provisions of the Act. That was the best judgment assessment by him. Aggrieved by that order, the assessee was before the first appellate authority. The appellate authority had modified the order of assessment so passed by the assessing authority and had directed the assessing authority to revise the said assessment. Aggrieved by the said order, the Revenue had carried the matter in appeal before the Appellate Tribunal in A.I.T.A.No.201/1993. The Tribunal by its order dt. 7.3.2001 had accepted the version of the Revenue and thereby had set aside the order passed by the first appellate authority and further restored the order passed by the assessing authority. Aggrieved by the order so passed by the Tribunal, the assessee is before us.

3. The assessee has raised the following questions of law for our consideration and decision:

> "1. Whether on the facts and circumstances of the case, has not the Appellate Tribunal gone wrong in holding that the right of picking pepper for the assessment year was not entrusted to contractors due to labour problem and acute union rivalry.

2. Whether on the facts and circusmtances of the case, has not the Appellate Tribunal gone wrong in holding that the petitioner had claimed any pepper picking charges as per the returns filed by him.

3. Did the pepper picking slips refer to the relevant financial year.

4. Can the assessing authority follow cash system of accounting for certain crops and mercantile system for other crops such as pepper in the same order?"

4. In so far as question Nos.1 to 3 are concerned, those are, in our opinion, purely questions of fact. In exercise of our powers under sec.78 of the Act, we cannot decide those questions in this revision.

5. In so far as question No.4 is concerned, though it is a question of law, the same is raised for the first time before us in this revision petition. To exercise our powers under sec.78 of the Act, two ingredients are required. Firstly, the Tribunal should have failed to decide a question of law or, in the alternative, had erroneously decided a question of law.

6. In the instant case, as we have noticed earlier, the fourth question of law is raised by the revision petitioner for the first time before us in this revision and the same cannot be entertained by us in view of the statutory provisions. In that view of the matter, we cannot decide the fourth question of law raised by the petitioner for the first time before us in this revision petition.

7. Accordingly this revision petition requires to be rejected and it is rejected.

8. In view of the order passed in the revision petition, the relief sought in

I.A.No.372/2003 need not be considered by this court. Accordingly, the said I.A. is also rejected.

Ordered accordingly.

**H.L. DATTU,**
**CHIEF JUSTICE.**

**K.T. SANKARAN,**
**JUDGE.**

mt/-

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

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S.T.Rev. No.34 of 2003

ORDER

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19.6.2007